

REMARKS

The Examiner is thanked for the Official Action of June 4, 2004. This request for reconsideration is intended to be fully responsive thereto.

Abstract of the Disclosure

The Examiner states in the Office Action that the numerals in the Abstract should be enclosed within parentheses. The Applicant has made the requested amendment to the Abstract and all numbers now are in parentheses. Therefore, the Examiner's objection to the abstract should now be removed.

35 U.S.C. § 102(b) and (e) Rejection

The Examiner rejected Claims 1-6 under 35 U.S.C. § 102(b) as being anticipated by the submitted JP 2529404 to Mizuno (listed in our IDS sheet and incorrectly referenced as JP252940 in the Office Action). The Examiner further rejected claims 1-6 of the present application under 35 U.S.C. § 102(b) as being anticipated by either Ikeda (US 20020117367 A1) or Ikeda et al., (US 20020185341 A1). With respect to Ikeda (US 20020117367 A1) the Examiner directs Applicant to Figures 2, 4, 5, 6, 7, 8, 12, 16a, and 16b. The Examiner also directs the Applicant to Figures 3-11, and 14-15 of Ikeda et al., (US 20020185341 A1). The Examiner further still rejects Claims 1-6 under 35 U.S.C. § 102(e) as being anticipated by Moriwaki (US6581729B1) or Nakao (US6715378), and specifically with respect to Moriwaki figures 2-5 and Nakao figures 1a-5b.

The Examiner uses 35 U.S.C. 102(b) and (e) to reject Claims 1-6 of the

present application as being anticipated by a plurality of references, as mentioned above. The Applicant respectfully disagrees with the Examiner's rejections based on MPEP 2131. According to the MPEP and to case law, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a **single prior art reference**" (emphasis added by Applicant) *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The MPEP goes on to further emphasize the point by referencing another case that states "The identical invention must be shown in as complete detail as is contained in the...claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Under MPEP 2131 each and every element must be found in a single prior art. The Applicant now shows that one or more important and significant elements of the present application are not disclosed, present, or suggested in their totality anywhere in a single cited reference.

Claim 1 of the present invention discloses "a secondary seating of the brake, on which the cable end fitting is temporarily seated." The secondary seating plays an important roll in that the secondary seating, together with the primary seating, is configured to allow the cable end fitting to pass from the secondary seating to the primary seating only upon the brake lever rotation and to prevent the cable end fitting from passing from the primary seating to the secondary seating when the brake lever is not rotating. Therefore, the secondary seating is pertinent and important to the present invention. However, this secondary seating is not mentioned, disclosed, or suggested anywhere in the Japanese Utility Model Registration No. JP2529404 to Mizuno.

Claim 1 of the present invention further discloses "a brake lever, a proximal portion thereof is superposed and pivotally supported on a brake shoe." The Applicant refers the Examiner to Ikeda (US 20020117367 A1) or Ikeda et al., (US 20020185341 A1). Neither of these references discloses a brake lever supported on a brake shoe and therefore the brake levers of these references does not function as the present invention, i.e., "a proximal portion thereof is supported and pivotally supported on a brake shoe so as to move at least one brake shoe outwardly."

With respect to the final references cited by the Examiner, i.e., Moriwaki (US6581279B1) and Nakao (US6715378), neither reference discloses either the brake lever with a pivotal portion supported on a brake shoe or the secondary seating.

Therefore, based on the previous arguments and reasoning the Applicant respectfully submits that the Examiner's rejections based on 35 U.S.C. 102(b) and (e) are improper and as such are moot and that claims 1-6 are now in condition for allowance.

35 U.S.C. § 103 Rejection

It appears to the Applicant that the Examiner is trying to combine references and that there is a potential § 103 rejection. Therefore, the Applicant would like to now preemptively address these issues.

The Examiner is reminded that there are 2 different types of brakes, i.e.,

(1) a brake where a brake lever is pivotally supported on a brake shoe (so-called a forward-pull type) and

(2) a brake where a mechanical actuator composed of a brake lever and a

strut is disposed between two brake shoes (so-called a cross-pull type).

Mizuno is (1) the forward-pull type while Ikeda, Ikeda et al., Moriwaki, and Nakao are (2) the cross-pull type. If a particular invention can be employed in both types, that fact should be stated in the specification of the particular application. A good example is Asai (US2002/0125082A1) which specifically discloses examples of the forward-pull and cross-pull type applications.

According to the MPEP the Examiner can only take into account knowledge which was within the level of ordinary skill at the time the claimed invention was made, and the Examiner cannot use knowledge gleaned from the applicant's disclosure. In other words, the Examiner cannot assume that all prior art is applicable to both forward pull and cross pull brakes without a specific disclosure or suggestion. It is difficult but necessary for the Examiner to forget what he has been taught about the claimed invention and cast the mind back to the time the invention was made...to occupy the mind of one skilled in the art who is presented only with the references, and who is normally guided by the then-accepted wisdom in the art. Applicant contends that it would be impermissible for the Examiner to combine the referenced prior arts because it would not be obvious to combine the two types of brakes. None of the prior references state usability in both types of brake anywhere in their specifications. The Examiner cannot look at the current application's disclosure and use the prior disclosure from two different types of brakes. There would be no motivation for the Examiner (or one in the ordinary skill of art) to combine the two unless you first consider the current result from this invention. This is impermissible hindsight and is not allowed under the MPEP. Thus, there should not be any 35 U.S.C. § 103 rejection based on a combination of the cited references.

Claim amendment based on the Examiner's rejection

Based on the Applicant's understanding of the Examiner's claim rejections Applicant has herein amended the claims 1 and 3 of the present application to clarify the claims and to more clearly show the invention. No new matter has been added.

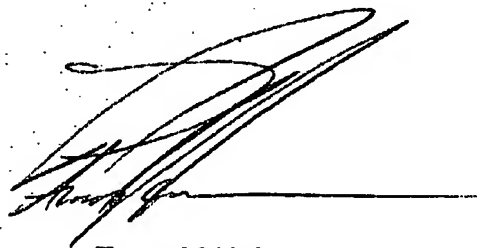
The following amendments to the Claims are made to clarify and stress that the brake cable is prevented from disengagement by the supporting mechanism of the "brake lever" on the "brake shoe." Claim 1 has been amended to read "[a] brake cable connecting apparatus for a drum brake device, comprising: a brake lever, a proximal portion thereof is superposed and pivotally supported on a brake shoe so as to move at least one brake shoe outwardly, a U-shaped groove is formed in a distal portion thereof, and a primary seating is provided around a bottom of the U-shaped groove at a cable releasing side so as to face a shoe rim of the brake shoe; and a brake cable, an inner cable thereof ~~retained in~~ received into the U-shaped groove, and a cable end fitting thereof, fixed on one end of the inner cable, is seated on the primary seating, wherein a secondary seating of the brake lever, on which the cable end fitting is temporarily seated, is provided around an opening of the U-shaped groove of the brake lever at both the cable releasing side and an opening side of the U-shaped groove and also provided at a portion apart from the primary seating, on which the cable end fitting is temporarily seated so as to face the shoe rim of the brake shoe; and a cable disengagement prevention configuration, is provided between the primary seating and the secondary seating, ~~said configuration~~ allows so as to allow the cable end fitting to pass ~~between from the secondary seating to the primary and secondary seatings seating only upon when rotating the brake lever prevents~~ is rotated to prevent the cable end fitting from passing ~~between from the primary and seating to the secondary seatings seating upon not rotating the brake lever when the brake lever is not rotated.~~

Conclusion

Under MPEP 2131 each and every element must be found in a single prior art. Applicant has shown that one or more important and significant elements of the present application are not disclosed or present in their totality anywhere in a single cited reference. Examiner does not give a primary reference and does use one of the accepted circumstances listed under MPEP 2131 as proper when citing multiple references. Finally, Applicant has amended the claims of the present application, based on Applicant's understanding of the Examiner's rejections, to better clarify and show the present invention.

Because of the significant structural and functional differences between the present invention, which gives great advantages of employing the present invention over Mizuno, Ikeda, Ikeda et al., Moriwaki, and Nakao, it is respectfully submitted that claims 1-6 define the invention over the cited references and notice to this effect is respectfully solicited. The Applicant believes that the claims are now in condition for allowance. No new matter has been added.

Should Examiner believe further discussion regarding the above claimed language would expedite prosecution they are invited to contact the undersigned at the number listed below.



Tracy M Heims
Reg.# 53,010

Apex Juris, pllc
13194 Edgewater Lane Northeast
Seattle, Washington 98125
Tel: 206-664-0314
Fax: 206-664-0329
Email: tracy@apexjuris.com